UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
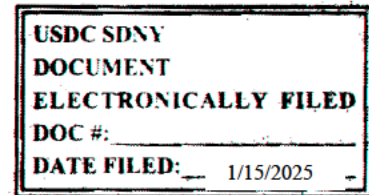
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NANCY LEE,

                                     Plaintiff,

                    -against-

COMMISSIONER OF SOCIAL SECURITY,

                                     Defendant.

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21-CV-09057 (MKV)(SN)

ORDER

SARAH NETBURN, United States Magistrate Judge:

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g), seeking review of a denial of

social security benefits. The Court remanded the matter for further review by the Commissioner

of Social Security, and the Court approved a stipulation and agreement awarding Plaintiff

$7,900.00 in attorney's fees under the Equal Access to Justice Act (the "EAJA"), 28 U.S.C. §

2412. ECF No. 31.

Following the remand, Plaintiff received retroactive benefits from the Social Security

Administration. Thereafter, on January 14, 2025, Plaintiff's counsel filed a motion for an award

of attorney's fees pursuant to 42 U.S.C. § 406(b). See ECF No. 32. Section 406(b) permits the

Court to approve "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits"

awarded to the plaintiff. Gisbrecht v. Barnhart, 535 U.S. 789, 795 (2002) (quoting 42 U.S.C.

§406(b)(1)(A)).

Because of the Commissioner's unique role and expertise in this area, the Court

ORDERS the Commissioner to respond to Plaintiff's motion. In particular, the Court directs the

Commissioner to address the question of whether the fees amount to an impermissible windfall.

See <u>Diberardino v. Commissioner of Social Security</u>, No. 17-cv-02868 (PKC), 2020 WL

6746828 (E.D.N.Y. Nov. 17, 2020).

Additionally, to conserve resources, to promote judicial efficiency, and in an effort to

achieve a faster disposition of this matter, the parties are ORDERED to discuss whether they are

willing to consent, under 28 U.S.C. § 636(c), to the magistrate judge's jurisdiction for all

purposes. If so, the parties shall file the Notice of Consent for the District Judge's signature.

SO ORDERED.

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SARAH NETBURN
United States Magistrate Judge

DATED: New York, New York
              January 15, 2025